IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

DARRYL STEWART,

       Plaintiff,

                                                  CV 11-0298 MCA/WPL

v.   Consolidated With

                                                  CV 11-0496 MCA/WPL

CORRECTIONAL MEDICAL SERVICES, INC., et al.,

       Defendants.

ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO COMPEL

Defendant Correctional Medical Services, Inc. ("CMS") has moved to compel Plaintiff

Darryl Stewart to provide an authorization releasing his medical records. (Doc. 39.) In response to

the motion, Stewart signed the medical authorization form. (Doc. 41.) However, he only completed

the general release and did not release the specific records for psychotherapy, mental health

treatment, substance abuse treatment, or treatment for sexually transmitted diseases or HIV/AIDS.

(Doc. 42 Ex. A.) He also limited the initial date of service, only releasing records from June 22,

2009 to present. (*Id.*) CMS now seeks access to all of Stewart's medical and treatment records from

the date of his arrest, June 4, 2009. (Doc. 42 at 1-2.)

In general, after a civil lawsuit is filed, parties are required to make initial disclosures. *See*

FED. R. CIV. P. 26(a)(1). In this district, when a party's medical condition is at issue, one of these

required disclosures is a completed authorization to release medical records form. D.N.M.LR-Civ.
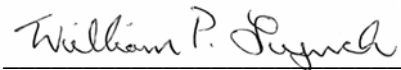
26.3(d)(3).

Because Stewart is in state custody and is *pro se*, this case is exempt from the provisions

related to initial disclosures. FED. R. CIV. P. 26(a)(1)(B)(iv). However, Stewart's medical records

from Metropolitan Detention Center, to which CMS no longer has access without a release form (*see*

Doc. 42 at 2), are critical to his claim that his serious medical needs were ignored from June 20 to

July 28, 2009. (*See* Doc. 17 at 1.) CMS will be required to prepare a *Martinez* report to assist the

Court in evaluating the factual and legal basis for Stewart's claims. (*See id.* at 2; Doc. 36

(temporarily vacating *Martinez* report deadlines).) The Court will require that the relevant medical

records be attached to the report. Accordingly, Stewart's authorization to release medical records

is necessary, and it must cover the entire length of his current incarceration, from June 4, 2009

through the present.

However, CMS has not explained why the specific records regarding mental health,

substance abuse, and sexually transmitted disease treatment are necessary. In support, CMS merely

states that Stewart "brings claims of medical negligence, medical indifference, and neglect and seeks

damages for mental anguish . . . ." (Doc. 42 at 2.) All of Stewart's medical claims relate to his

general medical treatment, and CMS should be able to access the necessary records with a general

medical release. Records related to Stewart's mental state may be relevant to the issue of damages,

but that issue will not be before the Court at the *Martinez* report stage. Instead, the Court will only

consider the factual and legal basis for Stewart's claims. *See Hall v. Bellman*, 935 F.2d 1106, 1109

(10th Cir. 1991). If Stewart's claims survive summary judgment, then CMS would be entitled to

Stewart's mental health records. At this stage, though, I will not order Stewart to release all of his

records pertaining to potentially irrelevant treatment.

IT IS THEREFORE ORDERED that CMS's motion is GRANTED IN PART and DENIED

IN PART. CMS shall immediately provide Stewart with a blank medical authorization form, which

Stewart will complete and sign for dates of service from June 4, 2009 through the present. CMS must receive the completed form by **May 7, 2012**. However, Stewart is not required to release the specific records that CMS requested at this point. **If Stewart does not remedy the dates of service on the medical release form, he could be subject to sanctions, including the dismissal of this action with prejudice.**

_____
William P. Lynch
United States Magistrate Judge

A true copy of this order was served
on the date of entry--via mail or electronic
means--to counsel of record and any *pro se*
party as they are shown on the Court's docket.   3